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IN  
**The United States Circuit  
Court of Appeals**  
for the Ninth Circuit

**STEAMER "SAMSON" and BARGE No. 8,  
BARGE No. 9 and BARGE No. 27**

**COLUMBIA CONTRACT COMPANY,  
a Corporation  
CLAIMANT AND APPELLANT**

**SHAVER TRANSPORTATION COMPANY,  
a Corporation  
LIBELANT AND APPELLEE**

**STANDARD OIL COMPANY OF CALIFORNIA,  
a Corporation  
RESPONDENT IN PERSONAM**

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**Brief on Behalf of the Standard Oil  
Company of California**

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**APPEAL FROM THE DISTRICT OF OREGON**

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**SNOW & McCAMANT and  
GEORGE B. GUTHRIE  
Proctors for Standard Oil Co.**

**WOOD, MONTAGUE & HUNT  
Proctors for Appellee**

**TEAL, MINOR & WINFREE  
Proctors for Appellant**



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STEAMER "SAMSON" and BARGE No. 8,  
BARGE No. 9 and BARGE No. 27.

COLUMBIA CONTRACT COMPANY,  
a Corporation,  
*Claimant and Appellant.*

SHAVER TRANSPORTATION COMPANY,  
a Corporation,  
*Libelant and Appellee.*

STANDARD OIL COMPANY OF CALIFORNIA,  
a Corporation,  
*Respondent in Personam.*

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Brief in Behalf of the Standard Oil  
Company of California

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**STATEMENT**

This appeal of the Columbia Contract Company arises upon a decree below charging the claimant with liability for a collision on the Columbia River between the Steamer "Henderson," owned by the libelant and having in tow

Barge 93 belonging to the Standard Oil Company and bound up the river for Portland, and the Steamer "Samson" and her barges loaded with rock bound down the river for the mouth of the Columbia.

The libelant libeled the Steamer "Samson" and her barges *in rem*, pleading negligence of the Steamer "Samson," her officers, etc., as the cause of the collision, and in due season, after some preliminary exceptions and objections, an amended libel was filed, and the Steamer "Samson" and her barges through their claimant answered the libel.

Whereupon the libelant filed in the then pending libel *in rem*, what is denominated in the record a supplemental (amended) libel *in personam* against the Standard Oil Company of California. This supplemental or amended libel so-called pleaded in effect that the damage occurred through the negligence of the Steamer "Samson" (See Article V, page 20 of the Record) and then pleaded that the Columbia Contract Company had filed its answer to the libel *in rem* and had pleaded facts which if true tended to show that the collision arose through the negligence of the pilot who had been employed by the Standard Oil Company to pilot the "Henderson" and Barge 93, and it was charged in this supplemental (amended) libel as follows:

"Article VII. If the aforesaid allegations of the said answer of the claimant and stipu-

lator Columbia Contract Company shall by the evidence be proven true, then the sinking and loss of the Steamer 'M. F. Henderson' was occasioned by the negligence of the Oil Barge 93, or the joint negligence of said Oil Barge No. 93 and the said Steamer 'Samson,' and in order to prevent a multiplicity of suits, and to bring all parties interested or liable in this suit, libelant brings this its libel against said respondent the Standard Oil Company, incorporated under the laws of the State of California, and alleges that said Standard Oil Company is a joint tortfeasor with and jointly concurred with the Steamer 'Samson' in such negligence as caused the total wreck of the said Steamer 'M. F. Henderson' as aforesaid."

It was not charged that the facts pleaded by the Columbia Contract Company were true (For the Supplemental Libel see pp. 19-29), and these facts so pleaded were in fact inconsistent with and contradicted by the facts of the collision as pleaded by the libelant.

The Standard Oil Company having been served appeared and moved to take the supplemental libel from the files and vacate the order giving leave to file the same upon the grounds:

#### I.

"The libelant has not stated such grounds in its supplemental libel or in application to file the same as entitles the libelant to file the supplemental libel herein; nor are the facts stated in the supplemental libel such as that the same constitute matters of supplemental libel herein; nor are the facts stated in the supplemental libel such as that any relief can be granted against this respondent."



## II.

"Libelant by its original libel herein filed against the Steamer 'Samson,' Barge No. 8, Barge No. 9 and Barge No. 27, hath made and presented a case *in rem* against the said 'Samson' and her barges, and by the supplemental libel filed herein the libelant has undertaken to proceed against this respondent *in personam*, and the two proceedings cannot be properly joined."

The court below, Bean, District Judge, overruled the motion and filed an opinion thereon, and thereupon the Standard Oil Company through its proctors filed exceptions to the supplemental libel as follows:

## I.

"That the said supplemental libel and the whole thereof is uncertain and insufficient in that it does not charge this respondent with the violation of any duty owed to the libelant by this respondent, but on the contrary expressly asserts negligence in navigation on the part of the Steamer 'Samson' and her barges, as also does it assert due care and proper navigation on the part of the Steamer 'Henderson' and Barge No. 93, and the said libel wholly fails to state facts sufficient to constitute suit against this respondent."

## II.

"The said 'supplemental libel' and the whole thereof is manifestly indirect, inconsistent and insufficient for the reason that this respondent is liable to the libelant if at all under a breach of its contract of charter with the owner of the 'Henderson,' as manifestly

appears from the said libel itself, and this respondent was not and cannot be as to the libelant a joint tortfeasor with the 'Samson' on account of the negligence asserted in either the amended libel of the libelant or the answer of the claimant, and that thereby two separate causes of action are improperly joined herein; as also it is improper under the rules and practice of admiralty by process *in personam* to join this respondent in the same suit with a proceeding *in rem* brought against the Steamer 'Samson' and her barges."

### III.

"That the said 'supplemental libel' and the whole thereof is uncertain, indirect, evasive and insufficient in that as manifestly appears by Article VII thereof libelant's asserted claim against this respondent is wholly hypothetical, based upon the condition that libelant's averments in its amended libel are false and untrue, whereas libelant is bound to know the truth of its articles in this case propounded under oath."

The exceptions being overruled, the Standard Oil Company filed its answer to the supplemental libel, admitting largely the whole thereof.

The claimant Columbia Contract Company, but without any reason therefor, since the supplemental libel was not filed against it, likewise answered the supplemental libel, pleaded the negligence as that of the Steamer "Henderson" and Barge 93, alleged that by reason of the collision certain damages had accrued to it and prayed that the libel be dismissed with costs, and that the claimant might "have and recover

of and from Shaver Transportation Company, libellant herein and owner of the Steamer 'M. F. Henderson,' or from the Standard Oil Company, incorporated under the laws of the State of California, and owner of Oil Barge 93, or against Shaver Transportation Company and the Standard Oil Company" the damages which it alleged had been suffered. This answer was not served upon the proctors for the Standard Oil Company.

The cause being at issue, a trial was had in open court and proof submitted on the question of liability by witnesses called and heard by the trial court, which found against the contentions of the Columbia Contract Company and awarded damages to the libellant; the decree dismissed the supplemental or amended libel of the libellant filed against the Standard Oil Company and directed that one-half of the costs of the Standard Oil Company should be recovered against libellant and the other half of its costs should be recovered against the Columbia Contract Company, and cost bills were filed accordingly.

It seems that the Standard Oil Company had an arrangement or agreement with the Oregon Round Lumber Company for the towage of all its vessels which might come into the river with oil, and the Oregon Round Lumber Company being advised of the necessity under the contract to tow Barge 93 called on the Shaver Transportation Company to do the towing, and while the towing was being done the collision occurred.



## I.

## THE QUESTION OF LIABILITY.

In the brief filed for the appellant it is said:

"The evidence in the case is exceedingly conflicting, so that it may be said that it is impossible to reconcile the evidence. Your Honors must, therefore, consider the stories as told by the several witnesses and from such stories ascertain if possible the responsibility for the collision."

This is a correct statement of the contradictory character of the evidence, and under the well-recognized rule which has been repeatedly announced and applied in this court, where the evidence is conflicting this court will not disturb the conclusion of the court below, especially where, as in this case, the evidence on the question of liability was heard in open court.

If, however, it becomes necessary so to do, the Standard Oil Company of California requests leave to file a brief upon the question of liability and upon the further question of whether or not in this cause the Standard Oil Company can be held on the supplemental or amended libel of the libelant filed in this cause, and whether such supplemental or amended libel states any cause of suit against the Standard Oil Company.

## II.

THE QUESTION OF COSTS AS BETWEEN  
THE STANDARD OIL COMPANY AND THE  
COLUMBIA CONTRACT COMPANY.

The court below having found the Steamer "Samson" and her barges responsible for the negligence, it followed that the supplemental or amended libel of the libelant against the Standard Oil Company should be dismissed, and an order of dismissal was entered accordingly in connection with the final decree, and the costs incurred by the Standard Oil Company in its defense were ordered to be taxed one-half against the Shaver Transportation Company and the other half against the Columbia Contract Company, the claimant.

It is submitted that it would have been quite proper for the court below to have ordered a taxation of all of the costs of the Standard Oil Company incurred in its defense against the libelant, with a recovery over by the libelant against the Columbia Contract Company of the costs of the libelant, and one-half of the costs which might be taxed by the Standard Oil Company against the libelant, and if this is so it would be quite proper for the court below to make a short cut producing the same results. The appellant in its answer to the libel pleaded the negligence of the "Henderson" and the pilot in charge of Barge 93, and in its answer to the

supplemental libel pleaded the same facts and prayed that its damage be awarded against either the libelant or the respondent or against both. Under the circumstances, therefore, the appellant cannot object to the taxation ordered, because the appellant itself is responsible for the false allegations making apparently necessary the filing of the supplemental libel. On this question Judge Cushman, in his opinion filed in connection with the taxation of the costs, said:

“The equitable reasons controlling any award of costs would be partial reimbursement of the party put to costs, and the awarding of them against the party causing those costs to be incurred. It is apparent on the face of the record that, had not the allegations of respondent’s fault been made in the answer, such allegations would not have been realleged by libelant in its supplement libel.

“Ordinarily costs would be merely incidental to the main recovery sought; but, ordinarily, there would be but two parties before the court. No equitable reason is perceived why a party who starts a false accusation, on the basis of which allegation the same is realleged by another party, should not have a part of the costs to which the party is put—against whom the same is made, taxed against it.

“Respondent contends that its decree for costs should be against the libelant, alone, and that libelant recover half, or all of those costs over against claimant. No equitable reason appears why, if this result might be attained indirectly in the manner proposed, it should not be attained directly—both the claimant and respondent being before the court—by a de-

cree awarding such costs against the claimant to the respondent.

"It is suggested that, if such costs might be so awarded, the claimant might be put to the costs of any number of parties in no way responsible, such innocent parties being brought into the case by libelant. The extreme case so pictured is not this case, in which a party has been brought in by reason of the unfounded allegations of claimant's answer."

However, inasmuch as the brief of libelant does not discuss the theory upon which the costs are taxed it is assumed that the assignments of error on this question are abandoned.

SNOW & McCAMANT,  
GEO. B. GUTHRIE,

*Proctors for Sandard Oil Company  
of California.*